

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

NORFOLK TRANSMISSION & MUFFLER
SERVICE, INC.,

Plaintiff,

vs.

OWNERS INSURANCE COMPANY,

Defendant.

8:16CV489

**SECOND AMENDED ORDER SETTING
FINAL SCHEDULE FOR
PROGRESSION OF CASE**

On April 23, 2018, a telephone conference was held on the Motion of the Defendant to Extend Deadline and Continue Trial. (Filing No. 82.) The Motion is granted. Accordingly,

IT IS ORDERED that the provisions of the court's earlier, Amended Final Progression Order, (Filing No. 72) shall remain in effect, and in addition to those provisions, the following shall apply:

1. **Disclosure of Expert Witnesses.**¹ The Defendant shall serve expert reports by **July 23, 2018**. If necessary to refute the disclosed opinions of an expert witness of an opponent, the plaintiff may disclose additional expert witness not later than **September 4, 2018**, provided that the disclosing party then provides all of the information described in Fed. R. Civ. P. Rule 26(a)(2) and makes the expert witness available for deposition prior to the date set for completion of depositions. Supplementation of these disclosures, if originally made prior to these deadlines, shall be made on these deadlines as to any information for which supplementation is addressed in Fed. R. Civ. P. 26(e). The testimony of the expert at trial shall be limited to the information disclosed in accordance with this paragraph.

2. The **Final Pretrial Conference** with the assigned magistrate judge is set for **September 18, 2018, at 10:00 a.m.** in chambers, 111 South 18th Plaza, Suite 2271, Roman L. Hruska United States Courthouse, Omaha, Nebraska. The final pretrial conference shall be attended by lead counsel for represented parties. Counsel shall complete prior to the pretrial conference, all items as directed in NECivR [16.2](#).² By the time of the pretrial conference, full

¹ A treating physician must be identified pursuant to Fed. R. Civ. P. 26(a)(2)(A), but a treating physician is not deemed to be "retained or specially employed to provide expert testimony in the case" so as to require a written report under Fed. R. Civ. P. 26(a)(2)(B).

² All personal information should be redacted from the public version of the order and/or attachments filed with the Clerk. *See* NECivR 5.3.

preparation for trial shall have been made so that trial may begin immediately thereafter. The pretrial conference will include a discussion of settlement, and counsel shall be prepared through investigation, discovery and communication with clients and insurers, if any, to discuss fully the subject of settlement, including realistic expectations about liability, obstacles to agreement, offers made, and offers which can be made at the conference. Counsel shall be prepared to make additional offers or proposals for settlement in behalf of their clients at the pretrial conference, and counsel shall be prepared to make or opine on recommendations for further negotiations and conferences.

3. **Mediation and Settlement:**

- a. If the parties intend to mediate their dispute, **notice of the mediation** shall be given to the staff of the assigned magistrate judge's office. The filing of a mediation reference order will terminate pending motions, without prejudice to refiling. If the mediation is not successful, the moving party may reinstate such a motion by filing a written notice to that effect, and the other parties may respond in accordance with the local rules, regarding the date of the notice as reinstating the response/reply time that remained as of the date the mediation reference order was filed.
- b. Not later than **two weeks prior to trial**, plaintiff or plaintiff's counsel shall serve on Defendant or Defendant's counsel a written, updated settlement proposal. Defendant or Defendant's counsel shall respond in writing to such proposal not later than one week before trial.
- c. **Notice of settlement** shall be given to the trial judge's office as soon as practicable but in any event in time to avoid summoning a jury. If a case settles and notice of settlement is not given in sufficient time to avoid summoning a jury, assessment of jury costs may – and normally will – be made against a party and/or counsel for one or more of the parties. For purposes of this paragraph, a jury is considered summoned for a trial at noon the business day prior to the designated date of trial.

4. **A 4-day jury trial** is set to commence, at the Court's call, during the week of **October 9, 2018**, in **Omaha**, Nebraska, before the **Honorable Robert F. Rossiter, Jr.**, United States District Judge. Unless otherwise ordered, jury selection shall be at the commencement of trial.

5. **Motions to Alter Dates.** All requests for changes of deadlines or settings established herein shall be directed to the assigned magistrate judge by appropriate motion, including all requests for changes of trial dates. Such motions shall not be considered in the absence of a showing by counsel of due diligence in the timely development of this case for trial and the recent development of circumstances, unanticipated prior to the filing of the motion, which require that additional time be allowed.

6. **Settlement Conference.** A settlement conference with the Court has been scheduled for **September 14, 2018 at 1:00 p.m. in Courtroom #7**, located on the 2nd Floor of the Roman L. Hruska U.S. Courthouse. A separate order will be issued regarding the settlement conference.

Dated this 23rd day of April, 2018.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge